



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/155361

PRELIMINARY RECITALS

Pursuant to a petition filed February 08, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a telephonic hearing was held on April 10, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency has issued petitioner all of the FS to which she is entitled for March 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

;

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Pang Thao Xiong
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County and is a recipient of FS.
2. On December 16, 2013 petitioner completed her six month review form (SMRF) for FS and the agency processed it.

3. On December 17, 2013 petitioner reported to the FS agency that she was employed with [REDACTED]. Petitioner also reported that she was not working December 23-January 1 at [REDACTED]. The agency requested she provide income verification of that employment by December 27, 2013. See Exhibit 6.
4. On December 27, 2013 the income verification was not received from petitioner, and therefore the agency closed her FS case effective February 1, 2014. See Exhibit 7.
5. On January 11, 2014 petitioner provided the agency with the [REDACTED] verification and the agency reopened and updated her FS for February. See Exhibit 8 (issuing \$15/month).
6. Petitioner is paid bi-weekly for 17.5 hours per week at \$14.07/hr at [REDACTED] and is considered a 10-month employee. See Exhibit 3.
7. On January 16, 2014 the petitioner contacted the agency to inquire as to the amount of FS issued to her for February 2014. At that time the agency discovered that it had been double counting her child support (CS) income and updated the case.
8. On January 20, 2014 the agency issued a notice to petitioner advising her that she would receive \$126 for February 2014. See Exhibit 9.
9. On January 23, 2014 the petitioner filed an appeal of the January 20 action which is the subject of DHA Decision No. FOO/154960.
10. On January 27, 2014 the Division of Hearings and Appeals ordered the agency to restore petitioner's FS to the level she received prior to the action until a hearing decision was issued. The agency took that action and issued \$347 for February 2014.
11. On January 27, 2014 the agency budgeted \$595.91 for CS based off of December, November and October's CS payments.
12. On February 3, 2014 the agency issued a notice to petitioner advising her that she would receive \$110 for March 2014. See Exhibit 9a. The agency budgeted \$595.91 for CS and \$1028.52 in earned income for that month.
13. On February 8, 2014 the petitioner filed an appeal of the February 3 action which is the subject of this appeal.
14. On February 12, 2014 the Division of Hearings and Appeals ordered the agency to restore petitioner's FS to the level she received prior to the action until a hearing decision was issued. The agency took that action and issued \$347 for March 2014.
15. On February 25, 2014 the petitioner reported to the agency that her CS had decreased and provided a printout of her CS payments from February and January 2014, and December 2013.

DISCUSSION

In determining the amount of FS to be issued each month, the county must budget all income of the FS household, including all earned and unearned income, including child support. 7 C.F.R. § 273.9(b); see also *FoodShare Handbook*, §4.3.4.2. From the gross household income, the following permissible deductions as discussed in the *FoodShare Handbook*, §4.6.1 are allowed: a standard deduction, an earned income deduction, a medical expenses deduction, a child support payment deduction, a dependent care expense deduction, and a shelter expense deduction. Some FS groups are not allowed a deduction for some expenses and some expenses are not always deducted in full. The maximum FS allotment amounts, based on household size, are listed at *FoodShare Wisconsin Handbook*, §8.1.2. The *FS Handbook* can be viewed online at <http://www.emhandbooks.wi.gov/fsh/>.

The first issue is how the agency calculated the petitioner's unearned income – CS - for March. On January 27, 2014 the agency budgeted \$595.91 for CS based off of December, November and October's CS payments. The agency is instructed on how to calculate the CS as follows:

Since child support amounts and payment dates frequently fluctuate, budget child support paid in the 3 months prior to the review month for FS. In some circumstances, more or less than 3 months can be used. Consider changes that have occurred or can reasonably be anticipated to occur when making the prospective estimate.

See *Process Help Guide*, §62.2.4, available online at <https://prd.cares.wisconsin.gov/help/ph/ph.htm>. I therefore find that the agency correctly budgeted the CS. However, on February 25, petitioner reported a decrease in CS and provided verification of it. According to FS policy, any changes that cause an increase in the FS benefit including decreases in income, person additions, increases in expenses, etc., **will be effective the first of the month following the report month.** *FS Handbook*, §6.1.3.3(emphasis added); 7 CFR 273.12(c)(1). Thus if she reported the change in February, it should affect her FS for March, but it did not. Therefore, the petitioner should have received an auxiliary payment for March, which she did not and will be addressed below. The agency agreed at hearing that the CS for March should have been budgeted at \$507.91.

The second issue relates to how the agency calculated petitioner's earned income. Petitioner is paid bi-weekly for 17.5 hours per week at \$14.07/hr. This results in a calculation that looks like this: $\$14.07 \times 35$ (17.5 hrs x 2 weeks) = \$492.45. The agency should then multiply the total of \$492.45 by 2.15 for a total of \$1058.76. This is because of the prospective budgeting that the agency employs in issuing FS. The policy states:

When income is received on a weekly or biweekly basis, convert the income to a monthly amount for FS, CC and W2 by multiplying average weekly amounts by 4.3 and biweekly amounts by 2.15. This conversion takes into consideration the fact that there will be extra paycheck months throughout the year.

See *Process Help Guide*, §16.4.3. Again, it appears the agency under-budgeted her earned income at \$1028.52. See Exhibit 5. Because the agency actually under-budgeted the earned income for March, I will not disturb their determination on that.

The last issue raised by the petitioner was with respect to how her earned income is treated. Petitioner is paid hourly and considered a 10-month employee. Petitioner wishes to be considered a contractual employee under the policy §16.4.7 which states:

Contractual income that is the food units annual income (intended to provide support for the entire year), and is not paid on an hourly or piece work basis, should be prorated over 12 months. Contractual income that is not the food units annual income (intended to provide support for the HH for only a portion of the year), and is not paid on an hourly or piece work basis, shall be prorated over the period the income is intended to cover.

...

Income from piecework or hourly work is not contractual income. Do not treat it as such.

Process Help Guide, §16.4.7; see also *FoodShare Wisconsin Handbook*, §4.3.2.1. The policy is clear that work paid hourly is not considered contractual income. The agency attempted to explain that this is likely of benefit to petitioner because in those months that she is not working, no income would be calculated for the FS benefit resulting in greater FS. She discussed her end of employment for the upcoming summer and the agency agreed it would file a change report for her with respect to that. She still may

need to verify the end of employment or provide other verification if the agency requests it. I find that the agency acted correctly in calculating her income as hourly.

In the end, despite some earned and unearned income miscalculations for the March FS, I must find that the agency has awarded petitioner all of the FS to which she is entitled, specifically because of the continuation of petitioner's FS benefits pending this decision, as this office ordered the county to not take the action being appealed, known in the parlance as a "shall not." Therefore the petitioner already received the maximum monthly allotment for a household of two for March. Accordingly, there is no additional FS to be issued.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The agency has issued petitioner all of the FS to which she is entitled for March 2014.

THEREFORE, it is

ORDERED

That the petition for review herein be dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

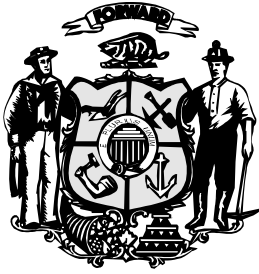
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson

Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 15th day of April, 2014

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 15, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability